

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MAR 14 1983

ALEXANDER L. STEVENS,
CLERK**OPE SHIPPING, LTD.,***Cross Petitioner,*

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY & GUARANTY COMPANIES, INC., VARIOUS BRITISH UNDERWRITERS AND UNDERWRITERS AT LLOYDS,*Cross Respondents.***VADOR SHIPPING, LTD.,***Cross Petitioner,*

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY & GUARANTY COMPANIES, INC., VARIOUS BRITISH UNDERWRITERS AND UNDERWRITERS AT LLOYDS,*Cross Respondents.***AGUA SHIPPING, LTD.,***Cross Petitioner,*

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY & GUARANTY COMPANIES, INC., VARIOUS BRITISH UNDERWRITERS AND UNDERWRITERS AT LLOYDS,*Cross Respondents.***DURAS SHIPPING, LTD.,***Cross Petitioner,*

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY & GUARANTY COMPANIES, INC., VARIOUS BRITISH UNDERWRITERS AND UNDERWRITERS AT LLOYDS,*Cross Respondents.***BRIEF IN OPPOSITION TO CONDITIONAL CROSS PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT****MICHAEL J. RYAN***Counsel for Cross-Respondents*

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LIST OF ALL PARTIES

A list of all of the parties to the appeal to the United States Court of Appeals for the Second Circuit is set forth at page i of Cross Petitioners' Brief.*

- * The majority of the capital stock in Allstate Insurance Co. is owned by Sears, Roebuck & Co. Allstate Insurance Co. has the following subsidiaries: Allstate Development Corp.; Allstate Indemnity Co.; Allstate Insurance Co. Of Canada; Allstate International, Inc.; Allstate Life Insurance Co.; Allstate Life Insurance Co. Of Canada; Harbridge House, Inc.; Northbrook Indemnity Co.; Northbrook Life Insurance Co.; Northbrook National Insurance; Northbrook Property & Casualty Insurance Co.; PMJ Mortgage Insurance Co. United States Fidelity & Guaranty Company is wholly owned by USF&G Corporation. Various British Underwriters at Lloyd's have no parent companies, subsidiaries or affiliates.

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TABLE OF AUTHORITIES**Cases:**

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BRIEF IN OPPOSITION TO CROSS PETITION FOR CERTIORARI

SUMMARY OF ARGUMENT

Cross respondents, Allstate Insurance Company, Inc., United States Fidelity and Guaranty Companies, Inc. and various British Underwriters and Underwriters at Lloyds ("Marine Risk Underwriters") respectfully pray that the cross petition of Ope Shipping, Ltd., Vador Shipping, Ltd., Duras Shipping, Ltd. and Agua Shipping, Ltd. for a writ of certiorari to the United States Court of Appeals for the Second Circuit be denied.

The decision below was in accord with the applicable law and the cross petition shows no special or important reasons why the writ should issue. Cross petitioners do not show that the Court of Appeals' decision with respect to Marine Risk Underwriters raises any questions of constitutional, treaty or statutory interpretation, that it is in conflict with the laws defined by this Court or by any other forum or that it breaks new ground or should be granted contingent upon the granting of the initial petition for certiorari by the War Risk Underwriters.

STATEMENT OF FACTS

This case arises out of four separate actions brought by cross petitioners in the United States District Court for the Southern District of New York to recover the insured value of four vessels under policies of Marine Insurance and War Risk Insurance.

The facts are set forth in the District Court Opinion (App. B, pp. A11-A22).**

** Reference to "App." are to the lettered appendices included as part of the War Risk Underwriters' petition for writ of certiorari.

Insofar as Marine Risk Underwriters are concerned, the policies of marine (hull) insurance covered "barratry of the Master and Mariners" . . . "excepting, however, such of the foregoing perils as may be excluded by provisions elsewhere in the Policy or by the endorsement thereon". Under the head of **WAR, STRIKES AND RELATED EXCLUSIONS** the policy reads. "This policy does not cover any loss, damage or expense caused by, resulting from or incurred as a consequence of:

(e) civil war, revolution, rebellion, insurrection or civil strife arising therefrom . . ." (App. B, p. A-21).

The District Court found that the loss of the four ships was "incurred as a consequence of civil war" (App. B, p. A-23) and dismissed the actions against Marine Risk Underwriters. On appeal, the Court of Appeals affirmed the decision of the District Court (App. A, pp. A4-A5).

ARGUMENT

I.

THE COURT OF APPEALS' REVIEW WAS PROPER.

The Court of Appeals found that the District Court did not err in holding that the conduct of the crews of the four vessels fell squarely within the exclusions of the marine policy so as to relieve the Marine Risk Underwriters from liability (App. A, p. A5).

The Court of Appeals agreed with the District Court that the conduct of the four crews was a direct result of the Nicaraguan civil war (App. A, A5).

The holding of the District Court denying coverage under the Marine Risk policies and the affirmance of this holding by the Court of Appeals are both in conformity with *Republic of China v. National Union Fire Insurance Co. of Pittsburg*, 151 F.Supp. 211 (D. Md. 1957), aff'd in part and rev'd in part, 254 F.2d 177 (4th Cir. 1958) cert. denied, 358 U.S. 823, 79 S.Ct. 38,

3 L.Ed. 2d 64 (1958), as well as following the guidelines of this honorable Court set forth in *Lanasa Fruit Steamship & Importing Co. v. Universal Insurance Co.*, 302 U.S. 556, 565, 58 S.Ct. 371, 375, 82 L.Ed. 422 (1938).

The decision of the Court of Appeals with respect to coverage under the Marine Risk Policies is not in conflict with any decision of another federal court nor with the prior holdings of this honorable Court. There are no special or important reasons requiring review of the decision of the Court of Appeals affirming the dismissal by the District Court of the actions against Marine Risk Underwriters.

II.

THERE IS NO NEED FOR REVIEW OF THE DECISION OF THE COURT OF APPEALS WITH RESPECT TO MARINE RISK UNDERWRITERS EVEN SHOULD THIS HONORABLE COURT GRANT THE PETITION OF WAR RISK UNDERWRITERS.

The questions presented for review by the War Risk Underwriters are confined to the application of exclusionary language contained in the American Institute War Risk Clauses contained in the War Risk Policy (War Risk Underwriters' petition, p. i).

While the War Risk Policy may complement the Marine Risk Policies to a degree, the policies do not present a situation of "either-or".

Should it be determined that one or more of the incidents involved fell within the ambit of the exclusionary language of the War Risk Policy by virtue of detainment or confiscation by the government of the country in which the vessel was owned or registered, such would still not change the application of the exclusion contained in the Marine Risk Policies (App. B, A-21).

CONCLUSION

The conditional cross petition for writ of certiorari to the United States Court of Appeals for the Second Circuit with respect to Marine Risk Underwriters should be denied.

Respectfully submitted,

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